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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,654

09/26/2003

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8222

23446 7590 02/01/2011
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ART UNIT

PAPER NUMBER

2427

MAIL DATE

DELIVERY MODE

02/01/2011

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/672,654
Filing Date: September 26, 2003
Appellant(s): KARAOGUZ ET AL.

JOSEPH M. BUTSCHER
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 23, 2010 appealing from the Office action mailed June 30, 2010.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-24 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,774,926	Ellis	3-2000
7,321,969	Schoen	4-2002
2004/0125789	Parker	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims **1-7, 9-19, 21-31 and 33-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,774,926 to **Ellis** et al., in view of US Patent No. 7,321,969 to **Schoen** et al., further in view of US Pub. No. 2004/0125789 to **Parker** et al.

Regarding to claim 1: Fig.1 of Ellis illustrates a **system [30] supporting the communication and consumption of media using a common user interface** (i.e. a display screen 130 that may be displayed by an interactive television program guide is shown in FIG. 9), **the system comprising:**

a television display in a first home;(i.e. user TV equipment [36] of the first user at user equipment [34])(**Ellis, col. 2 line 57 to col. 3 line 8**)

Fig. 3 of Ellis illustrates a Set-top box [62] of the first user equipment [34] includes **a first storage for storing media, in the first home** (i.e. Suitable storage devices that may be included in set-top box 62 include memory circuits, hard disk drives, digital video disks, compact disks, etc.), (**Ellis, col. 5 lines 18-21, 35-38**) **having a first associated network address** (i.e. the system 30 and the first viewer equipment 34 includes Set-top box [62] use to determine how to access the personal television channel programs by using Internet address information) (**Ellis, col. 14 lines 2-23**), **the first storage** inside Set-top box [62] **communicatively coupled to the television display [72];** (**Ellis, col. 5 lines 45-48**)

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Fig. 9 of Ellis illustrates an arrows 146 indicate that the user may scroll the list of program titles using a suitable user interface as **a first graphical user interface for display on the television display** (i.e. TV display [72]) , **the first graphical user interface having at least one view** (i.e. screen [130]) **comprising graphical representations of one or more media channels** (i.e. a list of program titles 132) **supporting the communication and consumption of media, and having a first look and feel** (i.e. Screen includes a Highlight region 148 may be positioned using the user interface (e.g., the remote control up and down arrow keys for a set-top box)). **(Ellis, col. 9 lines 8-47);**

Fig. 4 of Ellis illustrates **a personal computer monitor [84] in a second home;** (i.e. User computer equipment 38 of the second user at user equipment [34] may be a personal computer [78], a personal computer television (PC/TV), a handheld computer, a notebook computer, a laptop computer, or other computing device) **(Ellis, (Ellis, col. 5 lines 61-65) .** It is well known in the art; the computer equipment [78] includes hard disk drives as **a second storage for storing media, in the second home** (i.e. Suitable storage devices that may be included in user equipment include memory circuits, hard disk drives, digital video disks, compact disks, etc.), **(Ellis, col. 5 lines 18-21, 35-38), having a second associated network address** (i.e. the system 30 and the second viewer equipment 34 includes another computer [78] use to determine how to access the personal television channel programs by using Internet address information), **(Ellis, col. 14 lines 2-23), the second storage communicatively coupled to the personal computer monitor** (i.e. Monitor [84] of fig. 4 or Display [92] of Fig. 5);

Fig. 11 of Ellis illustrates **a second graphical user interface** (i.e. menu screen [156]) **for display on the personal computer monitor** [84], where allow the user to access information using various selectable options, i.e. use selects Option [168] where **the second graphical user interface having at least one view comprising graphical representations** (i.e. a screen such as personal channel showcase screen 168 of FIG. 12) **of the one or more media channels supporting the communication and consumption of media** (i.e. information Ratings for the top 100 personal television channels, star ratings 170 (indicating a critic's opinion of a program) **and having a second look and feel** (i.e. if links 177 are selected, the program guide may launch a web browser; direct the user to an associated web site or may launch a chat application to provide the user with an opportunity to join a chat related to a particular program, etc.) **(Ellis, col. 10 line 34-col. 11 line 25);**

software resident in a first memory at the first home (i.e. The interactive television program guide may be implemented using software that runs locally on user television equipment 36 using a set-top box) **and a second memory at the second home** (i.e. An interactive television program guide may be implemented using software that runs locally on user equipment 34 using computer [78]) **(Ellis, col. 8 lines 51-61)**, Fig. 11 of Ellis shows the program guide screen [156] as **the software enabling a user at the first home** (i.e. user interface of Set-top box) **to construct, at the first home** (i.e. user equipment [36]), **the one or more media channels from user selected** (i.e. if user selects option [166] on Menu screen [156] may contain information on the top 100 personal television channels including Star rating and Ratings for top 100 personal TV

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channels) **and scheduled media content** (i.e. user select option [162] may provide the user with an opportunity to view program schedule information for personal television channel programming.) , **(Ellis, col. 10 line 34-col. 11 line 25),**

However, Ellis is unclear with respect to **“the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home”;**

In an analogous art directed toward a similar problem namely improving the results from *the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home*

Schoen teaches the local instant messaging secure public key infrastructure proxies 22a and 22b are preferably implemented as software applications that are executed by one or more processing devices in the instant messaging device as **the software enabling closed and secure communication** (i.e. Virtual private networks (VPN) are known which use a public key infrastructure (PKI) to identify participants in the VPN to establish secure communications) **(Schoen, col. 2 lines 30-38) of the one or more media channels to members of a user group** (i.e. the instant message exchanged in a buddy lists. The secure instant messaging group policy certificate defines a plurality of different instant messaging groups, each identified by an instant messaging group identifier) **(Schoen, col. 4 lines 8-21), in a peer to peer manner, from the first home to the second home;** (Fig. 1 of Schoen illustrates the instant messaging system 10

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includes an instant messaging server 12. The instant messaging server 12 is in operative communication with a plurality of instant messaging devices as PDA, Set-top box, computers etc... **in a peer to peer manner**. For purposes of discussion, one of the instant messaging devices will be referred to as an instant messaging originator 14 which will be described as initiating an instant message while another instant messaging device 16 will be referred to as instant message recipient, although it will be recognized that either device may operate to send or received instant messages) **(Schoen, col. 6 lines 1-65)**. Therefore, it would have been obvious to one of the ordinary skill in the art, at the time of the invention was made to modify a software of Ellis including the instant messaging secure public key infrastructure proxies as taught by Schoen, to modify the instant messaging device and method that facilitates improved instant messaging group communication while also providing public key security if desired. **(col. 3 lines 12-21)**

Neither Ellis nor Schoen teaches the feature “*software that receives a request that identifies one of the first and second associated network addresses, and responds by identifying the other of the first and second associated network addresses to support the communication via the communication network of media between the first storage and the second storage for consumption*”

In an analogous art directed toward a similar problem namely improving the results from *software that receives a request that identifies one of the first and second associated network addresses, and responds by identifying the other of the first and second associated network addresses to support the communication via the*

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communication network of media between the first storage and the second storage for consumption; In Digital data distribution using Video Telephony, Fig. 4 of Parker illustrates a server [57] contains Data Base [58] and [59] including **software** (i.e. Video telephony software at server) (**Parker, ¶0025**) **that receives a request** (i.e. a patient initiates a request by pressing an alert or emergency button coupled to their patient device, a request message is sent to server 57). The request message includes a source IP address **that identifies one of the first and second associated network addresses** (i.e. IP addresses and patient ID's those are the corresponding one of plurality patient communication devices [50-53]) (**Parker, ¶0026**) **and responds by identifying the other of the first and second associated network addresses to support the communication via the communication network of media between the first storage and the second storage for consumption** (i.e. Using that IP address, video and voice communication links are established between the patient device initiating the request and the appropriate nurse's workstation (**Parker, ¶0027**)). Therefore, it would have been obvious to one of the ordinary skill in the art, at the time of the invention was made to modify the secured communications software at Server of Ellis and Schoen including Video telephony software **that identifies the associated network addresses** as taught by Parker in order to provide a data network interconnects the service provider workstation and the requester communication device, and the service provider workstation and the requester communication device have respective network addresses by using the respective network addresses and for

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initiating display of the data record at the service provider workstation. (**Parker,**

Abstract)

Finally, Fig. 19, 20 of Ellis depicts a program guide or other application may display an information screen 256 on screen 258, as **the first graphical user interface and the second graphical user interface being substantially the same graphical user interface, the first look and feel and the second look and feel being substantially the same.** (i.e. system 30 makes personal television channel programming available to viewers on a program guide contains Links may be provided to any suitable feature, including programming-related features, program guide features, and features related to interactive television applications such as chat applications, e-mail applications, shopping applications, interactive game applications, interactive wagering applications, etc. example: option 262 may be used to provide a link to a chat room related to the XYZ channel or the current program on that channel). (**Ellis, col. 15 line 35-col. 16 line 18),**

Regarding to claim 2, 3: Ellis also teaches the system of claim 1, **wherein the media comprises real-time video (Ellis, col. 7 lines 30-38, 49-52)**

Regarding to claim 4: The system of claim 1, **wherein consumption comprises displaying video, and displaying data. (Ellis, col. 3 line 55-col. 4 line 18, col. 6 line17-18),**

Regarding to claim 5: The system of claim 1, Fig. 4 of Parker shows Data Base [59] in Server [57], the database 59 storing tables providing IP addresses and patient ID's.

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Each patient device [50-53] preferably has a fixed IP address which is associated with each patient bed and/or room (**Parker, ¶0026**) meets **wherein the first and second associated network addresses are one of an Internet protocol (IP) address,**

Regarding to claim 6: The system of claim 1, Fig. 1 of Ellis illustrates **the communication network [40] comprises an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and a wireless infrastructure. (Ellis, col. 3 lines 8-16)**

Regarding to claim 7: The system of claim 1, Ellis also teaches **wherein the communication network [40] of Fig. 1 is the Internet. (Ellis, col. 3 lines 8-16)**

Regarding to claim 9: The system of claim 1, Ellis also teaches **wherein at least a portion of the media available for consumption is user captured media. (Ellis, col. 5 lines 24-25, col. 6 lines 1-2)**

Regarding to claim 10: The system of claim 1, Fig. 6 of Ellis displays on display [100] **wherein the first and second user interfaces comprise a view displaying information related to at least one media peripheral (i.e. Cellular telephone [42]). (Ellis, col. 7 lines 18-26)**

Regarding to claim 11: The system of claim 10, Fig. 6 of Ellis displays Cellular telephone [42] **as one media peripheral comprises a digital camera [98], (Ellis, col. 7 lines 4-17)**

Regarding to claim 12: The system of claim 1, Fig. 5 of Ellis displays **one media peripheral** (i.e. video camera [80]) **communicatively coupled to** a handheld computing device such as handheld computing device [86] includes **one of the first storage and the second storage** (i.e. storage device in a handheld computing device); (Ellis, col. 6 lines 23-27, lines 41-55)

With above same analysis in claim 1, Fig. 5 of Ellis depicts a display [92] includes **a third graphical user interface for display on the at least one media peripheral** (i.e. handheld computing device [86] as third user equipment [34] in network) (Ellis, col. 6 lines 56-65)

With above same analysis in claim 1, **the third graphical user interface having at least one view comprising representations of one or more user created and scheduled media channels supporting the communication and consumption of media, and having a third look and feel;** (Ellis, col. 10 line 34-col. 11 line 25); and

With above same analysis in claim 1, **Ellis teaches the first, second, and third graphical user interface being substantially the same graphical user interface, the first look and feel, the second look and feel, and the third look and feel being substantially the same.** (Ellis, col. 15 line 35-col. 16 line 18),

Regarding to claim 13: merely repeats the same limitation of claim 11; therefore, claim 13 is rejected for same reason as discussed in claim 11.

Regarding to claim 14: recites the features similar to those of claim 1. Therefore, claim 14 is rejected for the same reason as discussed in claim 1.

Regarding to claims 15, 16: merely repeat the same limitation of claims 2 and 3; therefore, claims 15, 16 are rejected for same reason as discussed in claims 2 and 3

Regarding to claim 17: merely repeats the same limitation of claim 4; therefore, claim 17 is rejected for same reason as discussed in claim 4.

Regarding to claims 18, 19: merely repeats the same limitation of claims 6, 7; therefore, claims 18, 19 are rejected for same reason as discussed in claims 6, 7.

Regarding to claim 21: merely repeats the same limitation of claim 9; therefore, claim 21 is rejected for same reason as discussed in claim 9.

Regarding to claim 22: merely repeats the same limitation of claim 10; therefore, claim 22 is rejected for same reason as discussed in claim 10.

Regarding to claim 23: merely repeats the same limitation of claim 12; therefore, claim 23 is rejected for same reason as discussed in claim 12.

Regarding to claim 24. merely repeats the same limitation of claim 11; therefore, claim 24 is rejected for same reason as discussed in claim 11.

Regarding to claim 25. recites the features similar to those of claim 1. Therefore, claim 25 is rejected for the same reason as discussed in claim 1.

Regarding to claim 26 :The one or more circuits of claim 25, merely repeats the same limitation of claim 2, therefore, claim 26 is rejected for the same reason as discussed in claim 2

Regarding to claim 27 :The one or more circuits of claim 25, merely repeats the same limitation of claim 3, therefore, claim 27 is rejected for the same reason as discussed in claim 3

Regarding to claim 28 : The one or more circuits of claim 25, merely repeats the same limitation of claim 4, therefore, claim 28 is rejected for the same reason as discussed in claim 4.

Regarding to claim 29 : The one or more circuits of claim 25, merely repeats the same limitation of claim 5, therefore, claim 29 is rejected for the same reason as discussed in claim 5

Regarding to claim 30:The one or more circuits of claim 25, merely repeats the same limitation of claim 6, therefore, claim 30 is rejected for the same reason as discussed in claim 6

Regarding to claim 31:The one or more circuits of claim 25, merely repeats the same limitation of claim 7, therefore, claim 31 is rejected for the same reason as discussed in claim 7

Regarding to claim 33. The one or more circuits of claim 32, merely repeats the same limitation of claim 9, therefore, claim 33 is rejected for the same reason as discussed in claim 9

Regarding to claim 34. The one or more circuits of claim 25, merely repeats the same limitation of claim 10, therefore, claim 34 is rejected for the same reason as discussed in claim 10

Regarding to claim 35. The one or more circuits of claim 34, merely repeats the same limitation of claim 11, therefore, claim 35 is rejected for the same reason as discussed in claim 11

Regarding to claim 36. The one or more circuits of claim 35, merely repeats the same limitation of claim 12, therefore, claim 36 is rejected for the same reason as discussed in claim 12

Regarding to claim 37 The one or more circuits of claim 36, merely repeats the same limitation of claim 13, therefore, claim 35 is rejected for the same reason as discussed in claim 13

Regarding to claim 38: The one or more circuits of claim 25, Fig. 3 of Ellis illustrates user equipment [36] comprises a Set-top box [62] **(Ellis, col. 5 lines 15-22)** meets **wherein the system comprises a set top box.**

Regarding to claim 39: The one or more circuits of claim 25, Fig. 9 of Ellis illustrates a user interface [130] **wherein one or both of the first display device [84] and the second display device [92] comprises a television [72] (Ellis, col. 9 lines 6-14).**

Regarding to claim 40: The one or more circuits of claim 25, Fig. 9 of Ellis illustrates a user interface [130] **wherein one or both of the first display device [92] and the**

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second display device [100] comprise a computer monitor [84]. (Ellis, col. 9 lines 6-14).

(10) Response to Argument

The Appellant respectfully traverses the rejections at least based on the following remarks.

I. The Proposed Combination Of Ellis In View Of Schoen And Parker Does Not Render Claims 1-7, 9-19, 21-31, and 33-40 Unpatentable

A. Claim 1:

1. Constructing Media Channels

Appellant respectfully submits that cited portion (col. 8 lines 51-61) of Ellis does not teach or suggest anything regarding user selection of media content, user-scheduling of media content, and construction of such "media channels" using such user selected and scheduled media content. Therefore, this cited portion (col. 8 lines 51-61) of Ellis does not teach or suggest at least "software resident in a first memory at the first home and a second memory at the second home, the software enabling a user at the first home to construct, at the first home, the one or more media channels from user selected and scheduled media content," as recited in claim 1. (Appeal brief, pages 12-13) Examiner respectfully disagrees.

Examiner relies on the cited portion (col. 8 lines 51-61) of Ellis for teaching **"software resident in a first memory at the first home and a second memory at the second home"**, Examiner interpreter **the software** (i.e. the interactive television program guide

may be implemented using software) **resident in a first memory at the first home** (i.e. such that runs locally on user television equipment [36] using a set-top box) **and a second memory at the second home** (i.e. the interactive television program guide may be implemented using software that runs locally on second user equipment [34] using computer [78]); this cited portion (col. 8 lines 51-61) of Ellis does teach or suggest at least "software resident in a first memory at the first home and a second memory at the second home", as recited in claim 1.

Appellant respectfully submits that cited portions (col. 10 lines 34-44, 45-49, 50-60 and line 61 to col. 11 line 25) of Ellis does not teach or suggest anything regarding user selection of media content, user-scheduling of media content, and construction of such "media channels" using such user selected and scheduled media content. Therefore, the above cited portion of Ellis does not teach or suggest at least "software resident in a first memory at the first home and a second memory at the second home, the software enabling a user at the first home to construct, at the first home, the one or more media channels from user selected and scheduled media content," as recited in claim 1.

(Appeal brief, pages13-17) Examiner respectfully disagrees.

Examiner relies on cited portion (col. 10 line 34-44) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user interface [156] of Fig. 11 where user can access to many options i.e.. personal channel showcase [166].

Examiner relies on cited portion (col. 10 line 45-49) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user

interface [156] of Fig. 11 where user can access to many options; i.e.. interactive Advertisement [164].

Examiner relies on cited portion (col. 10 line 50-60) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user interface [156] of Fig. 11 where user can access to select the personal channel showcase [168] as displayed on Fig. 12, where user enables to access to the top 100 personal TV channels, and requests to server.

Examiner relies on cited portion (col. 10 line 61-col. 11 line 6) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user interface [156] of Fig. 11 where user can access to select the personal channel showcase [168] as displayed on Fig. 12, where user enables to review the recommendation option [176], ratings option [170] of personal TV program channel.

Examiner relies on cited portion (col. 11, line 7-13) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user interface [156] of Fig. 11 where user can access to select the personal channel showcase [168] as displayed on Fig. 12, where user enables to select Chat [177], the program guide may launch a web browser and direct the user to an associated web site or may launch a chat application to provide the user with an opportunity to join a chat related to a particular program, etc.

Examiner relies on cited portion (col. 11, line 14-25) of Ellis for teaching an interactive television program guide software application **constructs** the Main Menu as the user interface [156] of Fig. 11 where user can select the personal channel option [162] as

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displayed on Fig. 13 where listing all the personal TV channel programs, i.e. Personal television channel description information 182 that describes each personal television channel including scheduling (Start/End) time, Title, description of personal TV channel. Summary, Examiner relies on cited portion (col. 10 line 34 to col. 11 line 25) of Ellis for teaching an interactive television program guide software application **constructs** running locally on user equipment 34 or a set-top box or an interactive television program guide equipment as remote server at user interface to allow user to access. By using an interactive television program guide as access communication with remote server where user can access the schedule information to view **scheduling of "media content"** (is constructed by the interactive television program guide software application) and user also allow to access information using selectable options as personal channels option 162 may provide the user the schedule information of personal television channel (is constructed by the interactive television program guide software application). Thus, the cited portion (col. 10 line 34 to col. 11 line 25) of Ellis clearly teaches "**a software enabling a user at the first home to construct the media channels from user selected and scheduled media content**". Therefore, the above cited portions (col. 8 lines 51-61) and (col. 10 line 34 to col. 11 line 25) of Ellis explicitly teach or suggest "software resident in a first memory at the first home and a second memory at the second home, the software enabling a user at the first home to construct, at the first home, the one or more media channels from user selected and scheduled media content," as recited in claim 1.

2. Closed And Secure Communication

Appellant respectfully submits that "Nevertheless, the Office Action mistakenly relies upon Schoen to overcome the acknowledged deficiency of Ellis; "the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home", because the Office Action fails to provide "concrete evidence" to support its conclusory statements regarding "peer-to-peer" reproduced above. The term "peer to peer" is not present anywhere in the cited portions of Schoen, or anywhere else in the text or figures of Schoen. In support for its assertion that Schoen teaches this aspect of claim 1, the Office Action recites language from Schoen, but fails to provide any explanation of how and why the text copied from Schoen, which does not mention the phrase "peer to peer" teaches "peer to peer" communication as claimed. Instead, the Office merely repeats language from claim 1, inserts pieces of text from the cited portion of Schoen, and adds a citation to a portion of Schoen. The Applicants respectfully submit that Schoen does not describe, teach, or suggest "peer to peer," as claimed. (Appeal brief, pages 18-20) Examiner respectfully disagrees.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Ellis discloses Personal TV Channel is constructed by Interactive Program Guide, Schoen melodies the acknowledged deficiency of Ellis "the software also enabling closed and secure communication of the one or more media channels to

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members of a user group, in a peer to peer manner, from the first home to the second home". In response to Rationale guideline, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Examiner applies the Rationale guideline G).

With respect to argue that "the Office Action recites language from Schoen, but fails to provide any explanation of how and why the text copied from Schoen, which does not mention the phrase "peer to peer" teaches "peer to peer" communication as claimed. Instead, the Office merely repeats language from claim 1, inserts pieces of text from the cited portion of Schoen, and adds a citation to a portion of Schoen".

Examiner do not mention the phrase "peer to peer" in the Prior Art reference to teach "peer to peer" communication as claimed because Prior Art discloses the architecture is same meaning of the phrase "peer to peer". It is well-known in the art; by definition; communication between 2 computers with the same communication protocol named peer to peer (see Microsoft Computer Dictionary, page 397). In this case, Fig. 1 of Schoen illustrates the instant messaging system 10; includes an instant messaging server 12 where is in operative communication with a plurality of instant messaging devices as PDA, Set-top box, computers etc...as peer-to peer architecture. For

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purposes of discussion, one of the instant messaging devices (**one peer**) will be referred to as an instant messaging originator 14 which will be described as initiating an instant message while another instant messaging device 16 (**another peer**) will be referred to as instant message recipient, although it will be recognized that either device may operate to send or received instant messages. Thus, Schoen explicitly teaches "**peer to peer**" communication in the cited portions . In this case, Examiner applies the Rationale guideline A).

B. Claim 14:

With the same discussed above with respect to claim 1, the Examiner respectfully submit that a *prima facie* case of obviousness has in fact been established with respect to claim 14

C Claim 25

With the same discussed above with respect to claim 1, the Examiner respectfully submit that a *prima facie* case of obviousness has in fact been established with respect to claim 25

II Obviousness Guidelines:

Examiner relies on above Rationales guidelines as discussed in part I.

Examiner respectfully recognizes Appellant 's position. However, a *prima facie* case of obviousness has in fact been established and the rejection should be sustained.

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The Examiner's Answer has addressed Appellant's arguments for patent ability. Any further arguments regarding other elements or limitation not specifically argued that the appellant could have made are not being addressed for consideration by the panel.

Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue needs further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/A. L./

Examiner, Art Unit 2427

Conferees:

/Scott Beliveau/

Supervisory Patent Examiner, Art Unit 2427

/Jason P Salce/

Primary Examiner, Art Unit 2421